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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,475	12/28/2000	Lynh Nguyen	ST9-99-134US3	7832

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EXAMINER

CHANKONG, DOHM

ART UNIT PAPER NUMBER

2152

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/750,475

Applicant(s)

NGUYEN, LYNH

Examiner

Dohm Chankong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1> This action is in response to Applicant's remarks filed 11.22.2005. Claims 20-22 have been added. Claims 1-22 are now presented for further examination.

2> This is a final rejection.

Response to Arguments

3> Applicant's arguments have been fully considered but they are not persuasive. Applicant's argues in substance: (a) the detection is not done in response to a request for the data source; and (b) that Kirby fails to detect unavailability of the data source in response to an initial request fro the data source by a remote application. Applicant's remarks, pg. 11 ¶ 2. These arguments are summed by Applicant's description of Kirby as broadcasting the unavailability of data to the applications, which is opposite of what is being claimed. Id.

However, the difference between Applicant's claimed invention and the Kirby reference is not a patentable distinction and merely an obvious variation to one of ordinary skill in the art. Kirby discloses a detection mechanism as claimed; the only difference being that Kirby detects the unavailability of the data source in a proactive manner whereas Applicant's limitations do so in response to a request. Applicant's method of detection is well known in the art and is merely an obvious variation of the method used in Kirby.

For example, the functionality claimed by applicant is exemplified by a web browser and a server in a typical network environment. The browser makes a request for information from the server and the request is submitted to the server, regardless of the state of the

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server. Only in response to the request [i.e., not receiving a response or receiving a response] does the browser detect that the server is unavailable.

Thus, the difference between Applicant's claimed invention and the Kirby reference is merely an obvious variation of one another and does not provide a patentable distinction over the prior art references.

4> Based on the preceding remarks, Applicant's arguments are not persuasive, and the claim rejections set forth in the previous action, filed 8.22.2005, are maintained.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5> Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polizzi et al (US 2002/0023158, "Polizzi," hereafter) and Kirby et al (US 5,925,117, "Kirby," hereafter).

6> Regarding claims 1, 8 and 15, Polizzi discloses a method, apparatus and program product (hereinafter a "system") comprising:

providing at least one interface module to interface with a remote application (105, fig.1);

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providing port module to interface between interface module and data source (agent, 130, fig. 1);

providing a connection manager to facilitate between the interface module and port module (service broker 125 fig. 1; ¶ 21).

Polizzi does not explicitly disclose a capability of reconnecting when data source, e.g., resource became available, with inherent unavailability detection of the data source.

However, a technique or concept of resource availability detection is not new, it has been around long prior to applicant's invention was made. It has been utilized to improve efficiency of network data communications. For instance, in the same field of endeavor, Kirby teaches the same (Col.3, lines 33-58).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to adapt the known technique as suggested by Kirby with Polizzi to connect or reconnect source and target or data source and application, dynamically. It further would have been obvious to one of ordinary skill in the art to modify Polizzi-Kirby's detection such that it occurred in response to a request as such a functionality is well known in the art. See ¶ 3 above.

7> Regarding claims 2-5, 9-12 and 16-17, Polizzi-Kirby discloses, detecting unavailability is accomplish by software module executed in a computer. Polizzi-Kirby does not explicitly call its software module as being specified by the claims language. However, applying the detection capability to any software module regardless of its nomenclature does not produce

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unexpected result and is an obvious variation of design choice, which depends on designer desirable. They are not patentable distinct.

8> Regarding claims 6, 7, 13, 14, 18 and 19, Polizzi-Kirby discloses, re-establishing a connection between the port module and the data source independently from initialization of the connection manager, i.e., without re-initializing the connection manager (reconnection is done with out rebooting device, see Kirby, Col 3, lines 32-40).

9> Claims 20-22 are rejected under 35 U.S.C § 103(a) as being unpatentable over Polizzi and Kirby, in view of Brendel et al, U.S Patent No. 5,774,660 ["Brendel"].

10> As to claims 20-22, Polizzi does not expressly disclose connecting directly the interface module and the port module for communicating independently from the connection manager in subsequent communications.

11> Brendel discloses a system whereby a load balancer is responsible for facilitating between a user and a remote application such as a server [Figure 6]. After the connection has been facilitated, the user and the remote application may connect directly with one another allowing subsequent communications from the server to be sent to the user such that the load balancer is bypassed [column 9 «lines 18-21»].

It would have been obvious to one ordinary skill in the art to modify Polizzi's system to incorporate Brendel's teachings; that is, to enable direct communications between Polizzi's

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network interface and agents, bypassing the service broker, to reduce the amount of bandwidth that must flow through the broker [see Brendel, column 9 «lines 60-64»]. Such a modification in Polizzi's system would provide substantial improvement in Polizzi's service broker, as evidenced by the reduction in workload of Brendel's load balancer. Polizzi's service broker and Brendel's load balancer are analogous as they both responsible for establishing connections between user and remote applications [see Polizzi, 0021 & Brendel, column 6 «lines 25-26»].

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

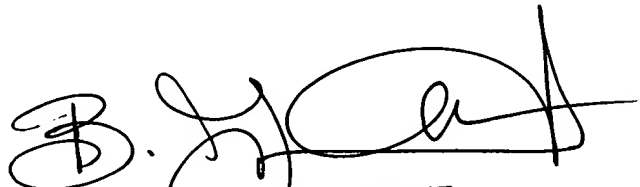
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dohm Chankong whose telephone number is 571.272.3942. The examiner can normally be reached on Monday-Thursday [7:00 AM to 5:00 PM].

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571.272.3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DC



BUNJOB JAROENCHONWANIT
SUPERVISORY PATENT EXAMINER